THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 28419 of 1997

DATED: 28-03-2007

Between:-

Gulbinder Singh Multani s/o late Hon. Lieut. Shamsher Singh, aged 34 years, R/o Visakhapatnam District.

…PETITIONER

And

The Union of India represented by its Secretary to Government, Ministry of Defence, South Block, New Delhi and three others.

..RESPONDENTS.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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O R D E R

Questioning the action of the respondents in not promoting the petitioner as Master Chief Engine Room Artificer-II (MCERA-II) in the year 1993 and seeking a consequential direction to give notional promotion, pay arrears of salary and re-fix his pension in the promotional scale, the present writ petition is filed.

The petitioner was appointed as an Artificer Apprentice in the Indian Navy on 31.07.1980. He was promoted to several higher grades during the period 1980 to 1993. Selections to the posts of MCERA-II, which is equivalent to Master Chief Petty Officers (MCPO-II), were held in March, 1993. The petitioner in his letter dated 03-08-1993, had submitted his unwillingness to continue in Naval service. The select list of MCERA-II was finalized and published on 22-09-1993. On the ground that the petitioner had submitted a certificate expressing his unwillingness to continue in Naval service the respondents, vide proceedings dated 24.01.1994 and 25.03.1994, deleted his name from the select list of MCERA-II (equivalent to

MCPO-II). The petitioner would refer to the cases of Sri C.R Dhumal, Sri P. Prasad, Sri S. Sharma and Sri G.S.Multani who also underwent selections along with the petitioner in March, 1993 to the posts of MCERA-II, to contend that while these Officers had also submitted their certificates of unwillingness to continue in Naval service, they were, however promoted as MCERA-II while the petitioner was discriminated against and was denied promotion to the said post.

Sri D.V. Sitharam Murthy, learned counsel for the petitioner, would place reliance on the proceedings of July, 1994, which relates to the expiry of the engagement serial, wherein the petitioner's name was also listed, to contend that it is only after an employee, who has submitted a certificate of his unwillingness to continue in Naval service, is included in the expiry of engagement serial list, would he, by virtue of Naval Order 123/83, be dis-entitled to be considered for promotion to a higher post. Learned counsel would submit that since, in the present case, the Select List of MCERA-II Officers had been finalized on 22-09-1993, much prior to July 1994, when the list of expiry of engagement serial was finalized, the petitioner could not be denied promotion to the post of MCERA-II. According to the learned counsel, it is only after the Naval Officers/Sailors names are included in the said list, which relates to expiry of engagement serial, can persons included in the list, be denied promotion on the ground that

they have decided not to continue in Naval Service, and not prior thereto. Learned counsel would further contend that though the petitioner was entitled to wait till January 1994 to submit his certificate of unwillingness, since such a certificate is required to be submitted not later than 14 months prior to the completion of 15 year period, which in the petitioner's case was to expire only in July 1995, the petitioner cannot be penalized for having submitted his unwillingness certificate prior thereto. Learned counsel would contend that, while persons who underwent selections along with the petitioners in March 1993 were extended the benefit of promotion as MCERA-II on the sole ground that they had submitted their unwillingness certificates after they were promoted as MCERA-II on 22-09-1993, the petitioner was illegally discriminated against merely because he had submitted his unwillingness certificate prior thereto on 03-08-1993. Learned counsel would further contend that, since promotions were given with effect from 01-04-1993 on which date the petitioner had not submitted his unwillingness certificate, he could not be denied being extended the benefit of promotion as MCERA-II.

Sri A. Rajashekar Reddy, learned Assistant Solicitor General appearing on behalf of the respondents, would contend that Naval Order 123/83 has statutory force and, in the absence of any challenge thereto in the present writ petition, the action of the respondents in strictly adhering to the conditions stipulated therein cannot be faulted.

Learned Assistant Solicitor General would submit that, since selections were finalized only on 22-09-1993 it is this date which is relevant and not 01-04-1993 the date from which the benefit of promotion was retrospectively extended. According to the learned Assistant Solicitor General as on 22.09.1993 it is only the petitioner who had submitted his unwillingness earlier on 03-08-1993, and in view of the prohibition in Naval Order 123/83, he was denied being extended the benefit of promotion. He would further submit that others, who were promoted as MCERA-II, had submitted their unwillingness certificates after their being promoted to the said posts and as such Naval Order 123/83 had no application to their cases. Learned Assistant Solicitor General would contend that since the Navy could not force a Naval Officer/Sailor to continue in service beyond 15 years, once he has expressed his unwillingness to continue in Naval service, the inclusion of Naval Officer/Sailor's name in the expiry of engagement serial was a mere formality and the contention that it is only after inclusion in the said list, could a Naval employee be denied promotion, did not merit acceptance.

Before examining these rival contentions, it is necessary to note that Section 184 of the Navy Act, 1957 empowers the Central Government to make regulations of governance, command, discipline, recruitment, conditions of service and regulation of the naval forces. In exercise of the powers conferred under Section 184 of the Navy Act,

the Navy (Discipline and Miscellaneous Provisions) Regulations, 1965, were made. Regulation 2 (e) of the said Regulations defines "Navy Orders" to mean the general orders of the Chief of the Naval Staff issued in the publication entitled 'Navy Orders' and includes confidential Navy Orders.

Navy Order 123/83 is, thus, referable to Regulation 2 (e) of the Navy (Discipline and Miscellaneous Provisions) Regulations, 1965. Article 17 of the said Naval Order relates to unwillingness to re-engage and Sailors, who have expressed their unwillingness to re-engage for further service, are not to be considered for promotion to the rank of MCPO-II.

It is not in dispute that the rank of MCERA-II is equivalent to MCPO-II and that Article 17 of the Navy Order 123/83 applies even for promotion to the rank of MCERA-II.

The short question which necessitates examination is the relevant date from which Article 17 of the Naval Order 123/83 would apply. It is true that selections to the rank of MCERA-II were held in March, 1993. It is, however, clear from the material on record that the select list was finalized only on 22.09.1993, prior to which the petitioner had expressed, vide his letter dated 03-8-1993, his unwillingness to re-engage in further service in the Navy. Prohibition in Article 17 of Naval Order 123/83 is categorical and thereunder Sailors, who have expressed their unwillingness to re-engage in

further service, are not to be considered for promotion to the rank of MCPO II.

It is only on the date on which the promotion is actually effected, can a person be said to have been promoted to the rank of MCERA II and till then his selection cannot be said to have been finalized. The select list was finalized on 22-09-1993 and, prior thereto, the petitioner had submitted his unwillingness certificate to continue in Naval service on 03-08-1993 and as such the prohibition in Article 17 of the Naval Order 123/83 disentitled him from being considered for promotion to the rank of MCERA-II.

Even if it were to be accepted that promotions to the rank of MCERA-II were given with retrospective effect from 01-04-1993, it is not in dispute that the selections were not finalized till 22-09-1993, prior to which itself the petitioner had expressed his unwillingness to be re-engaged for further service in the Navy. The fact that, on finalization of select list on 22-09-1993, promotions to the rank of MCERA-II were effected with retrospective effect from 01-04-1993 is, therefore, of no consequence.

On a specific query from this Court as to whether a naval employee could be forced to continue in Naval Service beyond the contractual period of 15 years, in cases where he has expressed his unwillingness to be re-engaged, Sri D.V. Sitharam Murthy, learned counsel for the petitioner, would agree that he could be not forced to

continue in Naval Service or to be re-engaged. In such a situation, inclusion of the Naval Officer/Sailor's name in the expiry of engagement serial, which is a notification of the list of employees who have expressed their unwillingness to be re-engaged and whose engagement with the Navy is due to expire is a mere formality. The mere fact that such a list was published in July, 1994 is of no consequence and cannot be reckoned as the cut off date for being considered for promotion to the rank of MCERA-II.

The crux of the matter is whether on 03-08-1993, the date on which the petitioner expressed his unwillingness to be re-engaged in Naval Service, the petitioner can be said to have already been promoted to the rank of MCERA-II, for once such a letter was submitted the respondent Naval authorities had little option but to comply with Article 17 of Naval Order 123/83 and deny the petitioner the benefit of promotion to the rank of MCERA-II. It may well have been unfortunate for the petitioner that those who had participated in the selection process along with him were extended the benefit of promotion as MCERA-II, only because they had submitted their letters of unwillingness much after 22-9-1993 when they were promoted to the said rank, unlike the petitioner who had submitted such a letter prior thereto. While the voluntary act of the petitioner has, no doubt, resulted in his being denied promotion to the rank of MCERA-II which promotion he would have been entitled if only he had deferred

submission of his letter of unwillingness till the date on which he was promoted, Article 17of Naval Order 123/83 is clear and categorical and prohibits consideration for promotion of Sailors/Naval Officers who expressed their unwillingness to be re-engaged. Since the petitioner had expressed his unwillingness much before the selection list was finalized on 22-09-1993, he was denied consideration for promotion to the rank of MCERA-II, while those who had participated in the selection along with him were extended the benefit of promotion of MCERA-II and only after they were promoted did they submit their letter expressing their unwillingness to be re-engaged. While Article 17 of the Naval Order 123/83 may have operated harshly against the petitioner, it is necessary to note that the said Article is not under challenge in this writ petition and the order now passed is based on a construction of the said Article and not on an examination of its validity.

The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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RAMESH RANGANATHAN, J

Dated: 28-03-2007
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